
State of Wyoming



Wyoming Energy Conservation Improvement Program

For State Agencies, County & Municipal Governments,
Higher Education Facilities, Public School Districts,
Hospitals, and other Public Entities

PROGRAM MANUAL Appendix 1A

FACILITY OWNER CONTRACT EXAMPLES

APPENDIX 1A – FACILITY OWNER CONTRACT EXAMPLE (Government Entity)

CONTRACT BETWEEN THE WYOMING BUSINESS COUNCIL, BUSINESS AND INDUSTRY DIVISION, STATE ENERGY OFFICE AND

1. **Parties.** This Contract is made and entered into by and between the Wyoming Business Council, an agency of the State of Wyoming, by and for its Business and Industry Division, State Energy Office, (Council), whose address is 214 W. 15th St. Cheyenne, WY 82002; and _____ (Facility Owner), whose address is _____.
2. **Purpose of Contract.** The purpose of this Contract is to provide Facility Owner access to the services and support provided under the Wyoming Energy Conservation Improvement Program (WYECIP) for development and implementation of Energy Performance Contracting (EPC) projects and to obligate the Facility Owner to follow and adhere to the guidelines of the program.
3. **Term of Contract and Required Approvals.** This Contract shall commence on _____ or upon the date the last signature is affixed hereto, whichever is later, and shall terminate on _____, unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. All services shall be completed during this term.
4. **Consideration.** In consideration for the services rendered by the Council under this contract, the Facility Owner shall engage in a good faith effort to reduce its energy consumption through participation in WYECIP and following and adhering to its guidelines, rules, and provisions.
5. **Responsibilities of Facility Owner.** The responsibilities of the Facility Owner include, but are not necessarily limited to:
 - A. Engaging Council for initial assessment of project potential or review of initial assessment performed by an Energy Services Company (ESCO)
 - B. Utilizing an ESCo that has been pre-qualified by the WYECIP and has executed the WYECIP ESCo Contract

- C. Assigning members to the facility project team including operation, maintenance, financial, and upper management personnel
- D. Ensuring appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
- E. Providing access and escort to buildings
- F. Providing information as needed for the feasibility study, the Investment Grade Audit, and other project development activities
- G. Working with ESCo to develop/refine project parameters
- H. Reviewing and approving ESCo proposals, designs, and reports
- I. Ensuring recommendations of Council during reviews are addressed
- J. Executing contracts with ESCo and making payments for ESCo services, including payment to the ESCo for the Investment Grade Audit if a viable project is developed and Facility Owner declines to proceed further
- K. Arranging for project financing
- L. Providing facility owner project management
- M. Providing information as needed for measurement and verification activities
- N. Providing Council with annual reports on project cost, status, savings achieved and square footage impacted by the project for the term of the performance contract with the ESCo.
- O. Performing additional actions as required by the individual project requirements

6. Responsibilities of Council. The responsibilities for the Council include, but are not necessarily limited to:

- A. Assisting the Facility Owner to identify potential Energy Performance Contract projects
- B. Attending meetings between Facility Owner and Energy Services Companies as needed
- C. Assisting with review and refinement of project parameters
- D. Providing technical and contracting assistance
- E. Preparing the WYECIP Standard Contract documents
- F. Reviewing audits, proposals, calculations, contracts, and reports
- G. Assisting with oversight of project development
- H. Providing monitoring of the project implementation
- I. Reviewing measurement and verification of savings
- J. Mediating as needed any conflicts between Facility Owner and ESCo that may arise after execution of the WYECIP Standard Investment Grade Audit and Project Development or Energy Performance Contract

7. General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

B. Americans with Disabilities Act. The Facility Owner shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that this subsection does not waive, limit, or otherwise affect or reduce the full operation and effect of the provision in this Contract relating to the State's and the Council's full retention of all rights of sovereign immunity.

D. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Facility Owner shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Council.

E. Assumption of Risk. The Facility Owner shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Facility Owner's failure to comply with state or federal requirements. The Council shall notify the Facility Owner of any state or federal determination of noncompliance.

F. Audit/Access to Records. The Council and any of its representatives shall have access to any books, documents, papers, and records of the Facility Owner that are pertinent to this Contract. The Facility Owner shall, immediately upon receiving written instruction from the Council, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Facility Owner that are pertinent to this Contract. The Facility Owner shall cooperate fully with any such independent auditor, accountant, or accounting firm,

during the entire course of any audit authorized by the Council.

G. Availability of Funds. Each payment obligation of the Council is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Facility Owner, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Facility Owner at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Council to terminate this Contract to acquire similar services from another party.

H. Award of Related Contracts. The Council may undertake or award supplemental or successor contracts for work related to this Contract. The Facility Owner shall cooperate fully with other contractors and the Council in all such cases.

I. Compliance with Laws. The Facility Owner shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

J. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Facility Owner in the performance of this Contract shall be kept confidential by the Facility Owner unless written permission is granted by the Council for its release.

L. Entirety of Contract. This Contract, consisting of nine (9) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

M. Ethics. Facility Owner shall comply with any and all ethical standards governing Facility Owner's profession, and any applicable statutes, rules, regulations or standards governing contracting with a state agency.

N. Extensions. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term

described herein. Any extension of this Contract shall be initiated by the Council, and shall be effective only after it is reduced to writing and executed by all parties to this Contract. Any agreement to extend the term of this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

O. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party.

P. Indemnification. Each party to this agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

Q. Independent Contractor. The Facility Owner shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. The Facility Owner shall assume sole responsibility for any debts or liabilities that may be incurred by the Facility Owner in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Facility Owner or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Council. The Facility Owner agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Facility Owner or the Facility Owner's agents and/or

employees as a result of this Contract.

R. Kickbacks. The Facility Owner certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Facility Owner breaches or violates this warranty, the Council may, at its discretion, terminate this Contract without liability to the Council, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

S. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail or delivery in person. Any change of address must be provided in writing to both parties.

T. Notice and Approval of Proposed Sale or Transfer of the Facility Owner. The Facility Owner shall provide the Council with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Facility Owner. Such notice shall be provided in accordance with the notice provision of this Contract.

U. Order of Preference In the event of any inconsistencies between the terms of this Contract and any attachment or document referenced herein, the descending order of precedence for purposes of determining which terms shall govern is as follows: this Contract, the Council's WYECIP Program Documents.

V. Patent or Copyright Protection. The Facility Owner recognizes that certain proprietary matters or techniques maybe subject to patent, trademark, copyright, license or other similar restrictions, and warrants that not work performed by the Facility Owner or its subcontractors will violate any such restriction. The Facility Owner shall defend and indemnify the Council for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

W. Prior Approval. This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing and approved as to form by the Office of the Attorney General.

X. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

Y. Sovereign Immunity. The State of Wyoming and the Council do not waive sovereign immunity and the Facility Owner does not waive its governmental immunity by entering into this Contract. Each party specifically retains immunity and all defenses available to it pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.

Z. Taxes. The Facility Owner shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

AA. Termination of Contract. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. The Council may terminate this Contract immediately for cause if the Facility Owner fails to perform in accordance with the terms and conditions of this Contract.

BB. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

CC. Time is of the Essence. Time is of the essence in all provisions of this Contract.

DD. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

EE. Waiver. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties.

FF. Workers' Compensation and Unemployment Insurance. The Facility Owner shall provide to the Council proof of workers' compensation and unemployment coverage for all its employees who are to work on the project described in this Contract. Certificates of good standing in each of the Wyoming Workers' Compensation and Unemployment Insurance programs shall serve as sufficient proof if the Facility Owner is statutorily required to participate in those programs. If the Facility Owner's coverage is under a program different from the coverage provided by the Wyoming Department of Employment, proof of coverage shall be satisfied in manner to be determined sufficient in the discretion of the Council.

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9. Signatures. In witness thereof, the parties to this Grant Agreement, either personally or through their duly authorized representatives, have executed this Grant Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Grant Agreement.

The effective date of this Grant Agreement is the date of the signature last affixed to this page.

WYOMING BUSINESS COUNCIL

Tucker Fagan, Chief Executive Officer	Date
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Mark Willis, Director, Business and Industry Division	Date
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Thomas Fuller, Manager State Energy Programs	Date
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Name, Title	Date
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ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Donald Gerstein, Senior Assistant Attorney General	Date
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APPENDIX 1A – FACILITY OWNER CONTRACT EXAMPLE (Non-Profit Entity)

CONTRACT BETWEEN THE WYOMING BUSINESS COUNCIL, BUSINESS AND INDUSTRY DIVISION, STATE ENERGY OFFICE AND

1. **Parties.** This Contract is made and entered into by and between the Wyoming Business Council, an agency of the State of Wyoming, by and for its Business and Industry Division, State Energy Office, (Council), whose address is 214 W. 15th St. Cheyenne, WY 82002; and _____ (Facility Owner), whose address is _____.
2. **Purpose of Contract.** The purpose of this Contract is to provide Facility Owner access to the services and support provided under the Wyoming Energy Conservation Improvement Program (WYECIP) for development and implementation of Energy Performance Contracting (EPC) projects and to obligate the Facility Owner to follow and adhere to the guidelines of the program.
3. **Term of Contract and Required Approvals.** This Contract shall commence on _____ or upon the date the last signature is affixed hereto, whichever is later, and shall terminate on _____, unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. All services shall be completed during this term.
4. **Consideration.** In consideration for the services rendered by the Council under this contract, the Facility Owner shall engage in a good faith effort to reduce its energy consumption through participation in WYECIP and following and adhering to its guidelines, rules, and provisions.
5. **Responsibilities of Facility Owner.** The responsibilities of the Facility Owner include, but are not necessarily limited to:
 - P. Engaging Council for initial assessment of project potential or review of initial assessment performed by an Energy Services Company (ESCO)
 - Q. Utilizing an ESCo that has been pre-qualified by the WYECIP and has executed the WYECIP ESCo Contract

- R. Assigning members to the facility project team including operation, maintenance, financial, and upper management personnel
- S. Ensuring appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
- T. Providing access and escort to buildings
- U. Providing information as needed for the feasibility study, the Investment Grade Audit, and other project development activities
- V. Working with ESCo to develop/refine project parameters
- W. Reviewing and approving ESCo proposals, designs, and reports
- X. Ensuring recommendations of Council during reviews are addressed
- Y. Executing contracts with ESCo and making payments for ESCo services, including payment to the ESCo for the Investment Grade Audit if a viable project is developed and Facility Owner declines to proceed further
- Z. Arranging for project financing
- AA. Providing facility owner project management
- BB. Providing information as needed for measurement and verification activities
- CC. Providing Council with annual reports on project cost, status, savings achieved and square footage impacted by the project for the term of the performance contract with the ESCo.
- DD. Performing additional actions as required by the individual project requirements

6. Responsibilities of Council. The responsibilities for the Council include, but are not necessarily limited to:

- K. Assisting the Facility Owner to identify potential Energy Performance Contract projects
- L. Attending meetings between Facility Owner and Energy Services Companies as needed
- M. Assisting with review and refinement of project parameters
- N. Preparing the WYECIP Standard Contract documents
- O. Providing technical and contracting assistance
- P. Reviewing audits, proposals, calculations, contracts, and reports
- Q. Assisting with oversight of project development
- R. Providing monitoring of the project implementation
- S. Reviewing measurement and verification of savings
- T. Mediating as needed any conflicts between Facility Owner and ESCo that may arise after execution of the WYECIP Standard Investment Grade Audit and Project Development or Energy Performance Contract

7. General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

B. Americans with Disabilities Act. The Facility Owner shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that this subsection does not waive, limit, or otherwise affect or reduce the full operation and effect of the provision in this Contract relating to the State's and the Council's full retention of all rights of sovereign immunity.

D. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Facility Owner shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Council.

E. Assumption of Risk. The Facility Owner shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Facility Owner's failure to comply with state or federal requirements. The Council shall notify the Facility Owner of any state or federal determination of noncompliance.

F. Audit/Access to Records. The Council and any of its representatives shall have access to any books, documents, papers, and records of the Facility Owner that are pertinent to this Contract. The Facility Owner shall, immediately upon receiving written instruction from the Council, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Facility Owner that are pertinent to this Contract. The Facility Owner shall cooperate fully with any such independent auditor, accountant, or accounting firm,

during the entire course of any audit authorized by the Council.

G. Availability of Funds. Each payment obligation of the Council is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Facility Owner, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Facility Owner at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Council to terminate this Contract to acquire similar services from another party.

H. Award of Related Contracts. The Council may undertake or award supplemental or successor contracts for work related to this Contract. The Facility Owner shall cooperate fully with other contractors and the Council in all such cases.

I. Compliance with Laws. The Facility Owner shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

J. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Facility Owner in the performance of this Contract shall be kept confidential by the Facility Owner unless written permission is granted by the Council for its release.

L. Entirety of Contract. This Contract, consisting of nine (9) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

M. Ethics. Facility Owner shall comply with any and all ethical standards governing Facility Owner's profession, and any applicable statutes, rules, regulations or standards governing contracting with a state agency.

N. Extensions. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term

described herein. Any extension of this Contract shall be initiated by the Council, and shall be effective only after it is reduced to writing and executed by all parties to this Contract. Any agreement to extend the term of this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

O. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party.

P. Indemnification. The Facility Owner shall indemnify, defend and hold harmless the State, the Council, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Facility Owner's failure to perform any of Facility Owner's duties and obligations hereunder or in connection with the negligent performance of Facility Owner's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Facility Owner's malpractice.

Q. Independent Contractor. The Facility Owner shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. The Facility Owner shall assume sole responsibility for any debts or liabilities that may be incurred by the Facility Owner in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Facility Owner or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council, or to incur

any obligation of any kind on the behalf of the State of Wyoming or the Council. The Facility Owner agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Facility Owner or the Facility Owner's agents and/or employees as a result of this Contract.

R. Kickbacks. The Facility Owner certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Facility Owner breaches or violates this warranty, the Council may, at its discretion, terminate this Contract without liability to the Council, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

S. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail or delivery in person. Any change of address must be provided in writing to both parties.

T. Notice and Approval of Proposed Sale or Transfer of the Facility Owner. The Facility Owner shall provide the Council with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Facility Owner. Such notice shall be provided in accordance with the notice provision of this Contract.

U. Order of Preference In the event of any inconsistencies between the terms of this Contract and any attachment or document referenced herein, the descending order of precedence for purposes of determining which terms shall govern is as follows: this Contract, the Council's WYECIP Program Documents.

V. Patent or Copyright Protection. The Facility Owner recognizes that certain proprietary matters or techniques maybe subject to patent, trademark, copyright, license or other similar restrictions, and warrants that not work performed by the Facility Owner or its subcontractors will violate any such restriction. The Facility Owner shall defend and indemnify the Council for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

W. Prior Approval. This Contract shall not be binding upon either

party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing and approved as to form by the Office of the Attorney General.

X. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

Y. Sovereign Immunity. The State of Wyoming and the Council do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.

Z. Taxes. The Facility Owner shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

AA. Termination of Contract. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. The Council may terminate this Contract immediately for cause if the Facility Owner fails to perform in accordance with the terms and conditions of this Contract.

BB. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

CC. Time is of the Essence. Time is of the essence in all provisions of this Contract.

DD. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

EE. Waiver. No term or condition of this Contract shall be held to be

waived, modified, or deleted except by an instrument, in writing, signed by the parties.

FF. Workers' Compensation and Unemployment Insurance. The Facility Owner shall provide to the Council proof of workers' compensation and unemployment coverage for all its employees who are to work on the project described in this Contract. Certificates of good standing in each of the Wyoming Workers' Compensation and Unemployment Insurance programs shall serve as sufficient proof if the Facility Owner is statutorily required to participate in those programs. If the Facility Owner's coverage is under a program different from the coverage provided by the Wyoming Department of Employment, proof of coverage shall be satisfied in manner to be determined sufficient in the discretion of the Council.

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9. Signatures. In witness thereof, the parties to this Grant Agreement, either personally or through their duly authorized representatives, have executed this Grant Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Grant Agreement.

The effective date of this Grant Agreement is the date of the signature last affixed to this page.

WYOMING BUSINESS COUNCIL

Tucker Fagan, Chief Executive Officer	Date
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Mark Willis, Director, Business and Industry Division	Date
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Thomas Fuller, Manager State Energy Programs	Date
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Name, Title	Date
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ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Donald Gerstein, Senior Assistant Attorney General	Date
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